

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:

**PHILLIP HOOYER dba NATURAL
FERTILIZER COMPANY
Sioux County, Iowa**

ADMINISTRATIVE CONSENT ORDER
NO. 2011-AFO- 17

TO: Phillip Hooyer
Natural Fertilizer Company
3867 Cherry Avenue
Hudson, South Dakota 57034

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Phillip Hooyer dba Natural Fertilizer Company (Natural Fertilizer Company) for the purpose of resolving issues regarding Natural Fertilizer Company's failure to certify all employees engaged in hauling manure as commercial manure service representatives. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Jeff Prier, Field Office #3
Iowa Department of Natural Resources
1900 North Grand Ave., Suite E17
Spencer, Iowa 51301
Phone: 712/262-4177

Relating to legal requirements:

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: NATURAL FERTILIZER COMPANY

secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 or Iowa Code Chapter 459 and the rules adopted or permits issued pursuant thereto; and Iowa Code section 455B 109 and 567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Natural Fertilizer Company is a commercial manure service and Phillip Hooyer is the manager of Natural Fertilizer Company.
2. On February 3, 2011, Jeff Prier, DNR Field Office 3 environmental specialist senior, conducted a manure applicator inspection at the Sioux County Egg facility located at 2716 380th Street, Sioux Center, Iowa (Section 26, Plato Township, Sioux County, Iowa). Natural Fertilizer Company was transporting manure to a land application site approximately 17 miles from the Sioux County Egg facility. Mr. Prier discovered that three employees from Natural Fertilizer Company were not properly certified to be transporting manure. Brandon Reisma, Marvin Van Voorst, and Benji Van Donge were not certified at the time of the inspection. DNR had no records of Mr. Reisma ever being certified and the certifications for Mr. Van Voorst and Mr. Van Donge expired in 2010. Mr. Prier also noted that Natural Fertilizer Company failed to have proper signage on the side of its transport vehicles. All five of the semis were missing at least the mailing address of Natural Fertilizer Company, and three of the semis did not have any of the required signage. During the inspection Mr. Prier spoke with Mr. Hooyer. Mr. Hooyer thought that his employees had attended the training and had valid certifications. Mr. Hooyer told the uncertified haulers to park the trucks until they obtained certification.
3. On February 8, 2011, DNR issued a Notice of Violation letter to Natural Fertilizer Company for failing to ensure that all employees hauling and applying manure were certified commercial manure service representatives and failing to have proper signage on the transport vehicles. The letter informed Natural Fertilizer Company that the matter was being referred for further enforcement.
4. On February 10, 2011, Natural Fertilizer Company sent a letter in response to the Notice of Violation letter. The company informed the DNR that Mr. Reisma, Mr. Van Voorst, and Mr. Van Donge had become properly certified immediately after the inspection on February 3, 2011.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 459.315(1) states that a person shall not act as a commercial manure service representative unless the person is certified. Iowa Code section 459.315(2) states that a person who is required to be certified as a commercial manure service representative must be certified each year. 567 IAC 65.1 defines a commercial manure service representative as a manager, employee, agent, or contractor of a commercial manure service, if the person is engaged in transporting, handling,

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: NATURAL FERTILIZER COMPANY

storing, or applying manure on behalf of the service. During Mr. Prier's inspection it was determined that Mr. Von Donge, Mr. Reisma, Mr. Van Voorst, employees of Natural Fertilizer Company, were not properly certified to be hauling manure. The above-mentioned facts indicate violations of this provision.

2. 567 IAC 65.19(8)(e) requires that any vehicle used by a certified commercial manure service or representative to haul manure shall display the certification number, name, and address of the certified commercial manure service representative on the side of the tank or vehicle. Mr. Prier's inspection revealed that at least five of the vehicles used by Natural Fertilizer Company did not have a complete address and at least three of the vehicles had no signage at all. The above-mentioned facts indicate violations of this provision.

V. ORDER

THEREFORE, the DNR orders and Natural Fertilizer Company agrees to do the following:

1. Natural Fertilizer Company shall obtain proper manure applicator certification for its business and all employees engaged in the practice of hauling manure;
2. Natural Fertilizer Company shall display proper certified applicator signage on the company equipment; and
3. Natural Fertilizer Company shall pay an administrative penalty of \$4,500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation of the regulations for transportation of manure for land application involved in this matter.

2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission (Commission) to establish by rule a schedule of civil penalties up to \$10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC Chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of \$4,500.00. The administrative penalty is determined as follows:

Economic Benefit – Natural Fertilizer Company used uncertified employees to transport manure. Natural Fertilizer Company saved time and money by not ensuring

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: NATURAL FERTILIZER COMPANY

all employees were properly certified. An estimated economic benefit of using three uncertified haulers and failing to have proper signage on vehicles is estimated to be \$200.00, which is being assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for this type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. The manure applicator program was put in place to educate manure applicators on how to properly handle manure, and how to properly respond to a manure spill. Hauling manure without proper training/certification increases the risk of a manure spill degrading the environment. Natural Fertilizer Company's failure to ensure that its haulers were properly certified threatens the integrity of the regulatory program, because compliance with manure applicator certification rules is required of all commercial manure services in the state. Natural Fertilizer Company had three uncertified haulers and several of the vehicles being used failed to have the proper signage. Based upon these considerations, \$2,300.00 is assessed for this factor.

Culpability – Natural Fertilizer Company has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. Natural Fertilizer Company is a certified manure service and must be aware of the certification status of the haulers it employs and must be aware of the signage requirement. Natural Fertilizer Company had three uncertified haulers and several of the vehicles being used failed to have the proper signage. Therefore, \$2,000.00 is assessed for this factor.

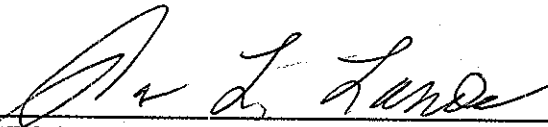
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Natural Fertilizer Company. For that reason, Natural Fertilizer Company waives its rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: NATURAL FERTILIZER COMPANY



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 27th day of
June, 2011.



PHILLIP HOOPER dba
NATURAL FERTILIZER COMPANY

Dated this 11 day of
June, 2011.

Kelli Book, Jeff Prier, Field Office 3, EPA, VIII D.4